

COUNTY OF KAUAI  
Minutes of Meeting  
OPEN SESSION

Approved as circulated May 19, 2017

Board/Committee:		BOARD OF ETHICS		Meeting Date	April 21, 2017
Location	Mo‘ikeha Building, Liquor Conference Room 3			Start of Meeting: 1:02 p.m.	End of Meeting: 1:38 p.m.
Present	Chair Mary Tudela; Vice Chair Michael Curtis; Secretary Maureen Tabura. Members: Susan Burriss. Ryan de la Pena; Calvin Murashige; Mia Shiraishi Staff: Mayor’s Chief of Staff Paula Morikami, Deputy County Attorney Sinclair Salas-Ferguson; Boards & Commissions Office: Commission Support Clerk Sandra Muragin				
Excused					
Absent					
SUBJECT		DISCUSSION		ACTION	
Call To Order				Chair Tudela called the meeting to order at 1:02 p.m. with 7 members present.	
		<u>RAO 17-007 Verbal request from Administrator Jay Furfaro of The Office of Boards and Commissions requesting guidance in clarifying the Kaua‘i County Board of Ethics Disclosure Statement requirements as it pertains to disclosing income from stock sales and real property.</u>  Chair Tudela asked to move item RAO 17-007 to an administrative sub-hearing or defer for discussion because the Board of Ethics is not inclined to take verbal requests. Deputy County Attorney Sinclair Salas-Ferguson stated that he is filling in for Deputy County Attorney Nicholas Courson and Paula Morikami, Mayor's Chief of Staff, has declined to speak on the issue. He referred to the Board of Ethics Rules and Regulations, Rule 5: Advisory Opinion, b., "All requests for advisory opinions made to the Board shall be in writing... "		Mr. Murashige moved to defer RAO 17-007. Mr. de la Pena seconded the motion. Motion carried 7:0.	
Approval of Minutes		<u>Regular Open Session Minutes of March 17, 2017</u>		Mr. de la Pena moved to approve the Open Session Minutes of March 17, 2017. Mr. Murashige seconded the motion. Motion carried	

SUBJECT	DISCUSSION	ACTION
		6:1 (Ms. Burriss Abstained)
<b>Communication</b>	<p><u>BOE 2017-05 Copy of a memorandum dated March 21, 2017 from Arryl Kaneshiro, Councilmember to Council Chair Mel Rapozo and Members of the Kaua‘i County Council regarding his recusal for a possible conflict of interest relating to Bill No. 2645, the Mayor’s Proposed Operating Budget for Fiscal Year 2017-2018 regarding the appropriations for the East Kaua‘i Soil &amp; Water Conservation district.</u></p> <p>Mr. Salas-Ferguson read the communication for the record.</p> <p><u>BOE 2017-06 Copy of a memorandum dated March 21, 2017 from Arryl Kaneshiro, Councilmember to Council Chair Mel Rapozo and Members of the Kaua‘i County Council regarding his recusal for a possible conflict of interest relating to Bill No. 2645, the Mayor’s Proposed Operating Budget for Fiscal Year 2017-2018 regarding the appropriations for Grove Farm Company, Inc.</u></p> <p>Mr. Salas-Ferguson read the communication for the record.</p> <p><u>BOE 2017-07 Copy of a memorandum dated March 17, 2017 from JoAnn A. Yukimura, Councilmember to Council Chair Mel Rapozo and Members of the Kaua‘i County Council regarding her recusal for a possible conflict of interest relating to Bill No. 2645, the Mayor’s Proposed Operating Budget for Fiscal Year 2017-2018 regarding the appropriations for the Boys &amp; Girls Club.</u></p> <p>Mr. Salas-Ferguson read the communication for the record.</p>	<p>Mr. Murashige moved to receive the communication. Mr. Curtis seconded the motion. Motion carried 7:0</p> <p>Ms. Tabura moved to receive the communication. Mr. Murashige seconded the motion. Motion carried 7:0</p> <p>Mr. de la Pena moved to receive the communication. Ms. Tabura seconded the motion. Motion carried 7:0</p>

SUBJECT	DISCUSSION	ACTION
<p><b>Request for an Advisory Opinion</b></p>	<p><u>RAO 17-006 Letter dated March 2, 2017 from Chief of Police Darryl D. Perry requesting to review copy of a letter and application dated February 9, 2017 from Ms. Vycky Gamble, EAH Housing Property Supervisor seeking applicants for the Resident Police Officer Program at Kaniko'o II and determine if it violates the County of Kaua'i Code of Ethics.</u></p> <p>Assistant Police Chief Rob Gausepohl said changes were made to the original tenancy agreement. He said the resident Police Officer program has also been arranged with Pa'anau Village in Kōloa and Kalepa Village in Hanamā'ulu and it benefits the community and Police Department.</p> <p>Chair Tudela asked Mr. Gausepohl how many resident Police Officer programs are on island. Mr. Gausepohl said he couldn't confirm how many resident police officers are in these housing projects under the rent without paying arrangement.</p> <p>Mr. Murashige asked if these other arrangements came before the Board of Ethics and Mr. Gausepohl responded he didn't know.</p> <p>Ms. Shiraishi asked for clarification because it states the resident Officer has no responsibility but if they see something do they have an obligation to respond. Mr. Gausepohl said they are not to act as security for the facility. The housing project wants an Officer with a police car in the parking lot for visibility. The agreement is clear that it is not between the County of Kaua'i it's between the Police Officer in good standing and the housing project. Theoretically, Ms. Shiraishi said, they could get a pool of applicants that do not have a patrol car and would have to select from that pool. Mr. Gausepohl agreed that a Police Officer without a patrol car could fill this resident program.</p> <p>Mr. Murashige asked if it was fair to assume from an income standpoint that</p>	<p>Mr. Murashige moved there is a conflict. Ms. Tabura seconded the motion.</p>

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	<p>any Police Officer would not qualify to be a resident there. Mr. Gausepohl did not know the particulars on income qualification.</p> <p>Chair Tudela stated that based on the Board of Ethics Code it clearly states no gifts, nor can they benefit from their position in any way.</p> <p>Mr. Murashige said he understands how the presence of a resident Police Officer would benefit the project but in a normal process the Police Officer due to income would not qualify.</p> <p>Ms. Shiraishi said the Kaua'i Police Department has contracts with private businesses to hire Police Officers and asked if this is something the housing project could contract. Mr. Gausepohl replied that they probably do not have the budget for it.</p> <p>Deputy County Attorney Peter Morimoto assigned to service the Police Department directed the Board to The Charter, Section 20.02 A. and E. and read <i>"No officer or employee of the county shall: Solicit, accept, or receive, directly or indirectly, any gift, whether in the form of money, service, loan, travel, entertainment, ...or in any other form, under circumstances in which it can reasonably be inferred that the gift is intended to influence the officer or employee in the performance of the officer or employee's official duties or is intended as a reward for any official action on the officer or employee's part."</i> He said no action will be taken in the Officer's official capacity and there is no reward for taking any action, it's giving free rent and the Officers presence on the premises.</p> <p>Mr. Murashige and Mr. Curtis both agreed that the Officer would be taking action by being a resident. The Officer would be occupying the apartment in exchange for free rent. Mr. Morimoto referenced and read if <i>"the gift is intended to influence the officer or employee in the performance of the</i></p>	

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	<p><i>officer or employee's official duties or is intended as a reward for any official action on the officer or employee's part.</i>” He doesn’t see what the official action is because the Officer would be off duty when he returns to the resident apartment.</p> <p>Mr. Gausepohl shared that at times when officially off duty he has assisted several incidences and received no benefits and as a Police Office it’s expected by the Community that they act and perform to protect the public all the times.</p> <p>Chair Tudela asked if Pa’anau Village and Kalepa Village had the same Resident Police Officer Program agreement and both Mr. Gausepohl and Mr. Morimoto did not know. Mr. Morimoto stated he did not draft the agreement he made corrections to their standard agreement.</p> <p>Mr. Salas-Ferguson read the following and recommended the Board use one of the sub-sections to make their decision:</p> <ul style="list-style-type: none"> <li>• The Charter Section 20.02 E.</li> <li>• A Guide to Ethical Issues in the Kaua‘i County Government <ol style="list-style-type: none"> <li>1. Article 1, Section 3-1.6 &amp; County of Kaua‘i, Article XX, Section 20.02 E. A.</li> <li>2. Section 3-1.1. Construction</li> <li>3. Section 3-1.4 Gifts (a) and (b)</li> <li>4. Section 3-1.6 Fair Treatment (a) (1), (2), (3), (4)</li> </ol> </li> </ul> <p>Mr. Curtis that stated it appears the Police Officer would receive preferential treatment because the resident program is only available to Police Officers.</p> <p>Chair Tudela stated there is a motion on the floor that says there is a conflict with the code and Counsel has recommended attaching a reason for the</p>	

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	<p>conflict from the four different sections read. Chair Tudela called for the question.</p> <p>Chair Tudela said that Counsel has advised the Board to attach a reason for the conflict and if no reason is attached then it creates open issues going forward. Mr. Curtis said he is of the opinion the vote was taken and the matter passed.</p> <p>Mr. Morimoto commented the rationale should be stated because the Board would not want to have an arbitrary and capricious decision that is not based on the law.</p>	<p>Motion carried 7:0</p> <p>Chair Tudela moved to attach a rationale to the motion as advised by Counsel. <i>(No second to the motion)</i></p>
<b>Disclosures</b>	<ol style="list-style-type: none"> <li>1. <u>Michael Martinez (Fire Commission)</u></li> <li>2. <u>Heather Kanoe Ahuna (Planning Commission)</u></li> <li>3. <u>Susan Howie Burriss (Board of Ethics)</u></li> <li>4. <u>Craig Anthony De Costa (Board of Reivew)</u></li> <li>5. <u>Wade Larry Lord (Planning Commission)</u></li> <li>6. <u>Russell Mark Kapi'olani Wong (Board of Review)</u></li> </ol>	<p>Ms. Tabura moved to receive Disclosures 1, 3, 4, 6 and deem them complete. Mr. de la Pena seconded the motion. Motion carried 6:1 (Ms. Burriss Abstained)</p> <p>Mr. Curtis moved to receive Disclosure 2 and deem complete. Mr. Murashige seconded the motion. Motion carried 7:0</p> <p>Ms. Tabura moved that section 3 is incomplete on Disclosure 5 and deemed incomplete. Mr. de la Pena seconded the motion. Motion carried 7:0</p>
<b>Announcements</b>	Next Meeting: Friday, May 19, 2017 – 1:00 p.m., Mo'ikeha Building, Liquor Conference Room	
<b>Adjournment</b>		Mr. Murashige moved to adjourn the meeting at

SUBJECT	DISCUSSION	ACTION
		1:38 p.m. Ms. Tabura seconded the motion. Motion carried 7:0.

Submitted by: \_\_\_\_\_  
Sandra M. Muragin, Commission Support Clerk

Reviewed and Approved by: \_\_\_\_\_  
Mary Tudela, Chair

( ) Approved as circulated.

( X ) Approved with amendments. See minutes of \_5/19/17\_ meeting.